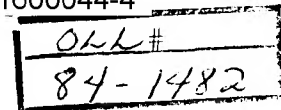




EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



SPECIAL

April 11, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Department of Justice (Attention: James Knapp)
Department of the Treasury (Attention: Robert Powis)
Department of Defense (Attention: Bill Snider and
Al Franklin)
✓ Central Intelligence Agency (Attention: Rob Davis)
General Services Administration (Attention: Frank Carr)
National Security Council

SUBJECT: House Government Operations Committee markup of H.R. 4620,
"Federal Telecommunications Privacy Act of 1984".

Attached is a copy of the subject bill as ordered reported by the House Government Operations Committee. Please advise us no later than COB - MONDAY, APRIL 16, 1984, of your agency's recommendation for an Administration position on this legislation should it be considered by the full House. This is a firm deadline.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Connie Horner
Mike Horowitz
Mary Ann Chaffee
Frank Seidl
Frank Reeder
Arnie Donahue
John Roberts

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4620 OFFERED BY MR. BROOKS

Strike out all after the enacting clause and insert in lieu thereof the following:

1 That this Act may be cited as the ''Federal
2 Telecommunications Privacy Act of 1984''.

3 SEC. 2. Title I of the Federal Property and
4 Administrative Services Act of 1949 is amended by adding at
5 the end thereof the following new section:

6 ''RECORDING OF CONVERSATIONS ON FEDERAL TELECOMMUNICATIONS
7 SYSTEM

8 ''SEC. 113. (a)(1) Except as provided in subsections
9 (b), (c), and (d), no Federal officer or employee shall
10 cause or permit the recording of, or listening-in upon, any
11 conversation conducted on the Federal telecommunications
12 system established under section 7 of the Act of June 14,
13 1946 (40 U.S.C. 295), or made available under section 110 of
14 this Act.

15 ''(2) Except as provided in subsections (b), (c), and
16 (d), no Federal officer or employee shall cause or permit
17 the recording of, or listening-in upon, any conversation
18 conducted on any other telecommunications system if the
19 conversation (A) is between a Federal officer or employee
20 and any other person and (B) involves the conduct of
21 Government business.

1 ''(b) Without the consent of any party to a
2 conversation, the recording of, or listening-in upon, such
3 conversation may be conducted notwithstanding subsection (a)
4 if such recording or listening-in is authorized under, and
5 conducted in accordance with the requirements of, the
6 Omnibus Crime Control and Safe Streets Act of 1968 (18
7 U.S.C. 2510 et seq.), the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1801 et seq.), or other applicable
9 law.

10 ''(c) With the consent of one party to a conversation,
11 the recording of, or listening-in upon, such conversation
12 may be conducted notwithstanding subsection (a) if the
13 recording or listening-in is performed in accordance with
14 the following conditions:

15 ''(1) The recording or listening-in is performed for
16 law enforcement purposes in accordance with procedures
17 established by the agency head, as required by the
18 Attorney General's guidelines for the administration of
19 the Omnibus Crime Control and Safe Streets Act of 1968,
20 and in accordance with procedures established by the
21 Attorney General.

22 ''(2) The recording or listening-in is performed for
23 counterintelligence purposes and approved by the
24 Attorney General or the Attorney General's designee.

25 ✓ ''(3) The recording or listening-in is performed at

1 a military command center for the purpose of ensuring
2 the accuracy of verbal instructions to operating
3 elements and preserving a record of such instructions to
4 enhance the command and control of such elements.

5 '(4) The recording or listening-in is performed
6 outside the United States for counterterrorism purposes
7 and approved by the Secretary of State or the designee
8 of the Secretary of State.

9 '(5) The recording or listening-in is performed by
10 any Federal employee for public safety purposes and
11 documented by a written determination of the agency head
12 or the designee that cites the public safety needs and
13 identifies the segment of the public needing protection
14 and cites examples of the hurt, injury, danger, or risks
15 from which the public is to be protected.

16 '(6) The recording or listening-in is performed by
17 a handicapped employee, provided a physician has
18 certified (and the head of the agency or designee
19 concurs) that the employee is physically handicapped and
20 the head of the agency or designee determines that the
21 use of a listening-in or recording device is required to
22 fully perform the duties of the official position
23 description. Equipment shall be for the exclusive use of
24 the handicapped employee. The records of any
25 interceptions by handicapped employees shall be used,

1 safeguarded, and destroyed (notwithstanding subsection
2 (h) of this section) in accordance with appropriate
3 agency records management and disposition systems.

4 ''(7) The recording or listening-in is performed by
5 any Federal agency for service monitoring but only after
6 analysis of alternatives and a determination by the
7 agency head or the agency head's designee that
8 monitoring is required to effectively perform the agency
9 mission. Strict controls shall be established and
10 adhered to for this type of monitoring.

11 ''(d) With the consent of all the parties to a
12 conversation, the recording of, or listening-in upon, such
13 conversation may be conducted notwithstanding subsection
14 (a). This includes telephone conferences, secretarial
15 recording, and other acceptable administrative practices.
16 Strict supervisory controls shall be maintained to eliminate
17 any possible abuse of this privilege. The agency head or the
18 agency head's designee shall be informed of this capability
19 for listening-in or recording telephone conversations.

20 ''(e)(1) Each agency shall ensure that--

21 ''(A) all listening-in or recording of telephone
22 conversations pursuant to paragraph (5), (6), or (7) of
23 subsection (c) shall have a written determination
24 approved by the agency head or the agency head's
25 designee before operations; and

1 ''(B) service personnel who monitor listening-in or
2 recording devices shall be designated in writing
3 pursuant to paragraph (7) of subsection (c) and shall be
4 provided with written policies covering telephone
5 conversation monitoring which shall contain at a minimum
6 the following instructions:

7 ''(i) no telephone call shall be monitored
8 unless the Federal agency has taken continuous
9 positive action to inform the callers of the
10 monitoring;

11 ''(ii) no data identifying the caller shall be
12 recorded by the monitoring party;

13 ''(iii) the number of calls to be monitored
14 shall be kept to the minimum necessary to compose a
15 statistically valid sample;

16 ''(iv) agencies using telephone instruments that
17 are subject to being monitored shall conspicuously
18 label them with a statement to that effect; and

19 ''(v) since no identifying data of the calling
20 party will be recorded, information obtained by the
21 monitoring shall not be used against the calling
22 party.

23 ''(2) Current copies and subsequent changes of agency
24 documentation, determinations, policies, and procedures
25 supporting operations pursuant to paragraph (5), (6), or (7)

1 of subsection (c) shall be forwarded before the operational
2 date to the General Services Administration. Specific
3 telephones shall be identified in the documentation or
4 determination to prevent any possible abuse of the
5 authority.

6 ''(3) Procedures for monitoring performed under
7 paragraph (1) of subsection (c) shall contain at a minimum--

8 ''(A) the identity of an agency official who is
9 authorized to approve the actions in advance;

10 ''(B) an emergency procedure for use when advance
11 approval is not possible;

12 ''(C) adequate documentation on all actions taken;

13 ''(D) records administration and dissemination
14 procedures; and

15 ''(E) reporting requirements.

16 ''(4) Requests to the General Services Administration
17 for acquisition approval or installation of telephone
18 listening-in or recording devices shall be accompanied by a
19 determination as defined in subsection (j)(2).

20 ''(5) Each agency shall ensure that a program is
21 established to reevaluate at least every two years the need
22 for each determination authorizing listening-in or recording
23 of telephone conversations under this section.

24 ''(f)(1) The General Services Administration shall
25 periodically review the listening-in programs within the

1 agencies to ensure that agencies are complying with this
2 section and the Federal property management regulations and
3 shall undertake investigations concerning noncompliance with
4 paragraphs (5), (6), and (7) of subsection (c).

5 ''(2) The General Services Administration shall provide
6 assistance to agencies in determining what communications
7 devices fall within the listening-in or recording category.
8 The General Services Administration shall also provide
9 guidance and assistance in the development of administrative
10 alternatives to the listening-in or recording of telephone
11 conversations.

12 ''(3) The General Services Administration shall take
13 appropriate steps to obtain compliance with this section if
14 an agency has not documented its devices in accordance with
15 this section.

16 ''(g) Any Federal officer or employee who causes or
17 permits the recording of, or listening-in upon, any
18 conversation in violation of this section shall be fined not
19 more than \$10,000, or imprisoned for not more than one year,
20 or both; and shall forfeit his office and employment with
21 the United States.

22 ''(h) Any recording or transcript of a conversation made
23 under (or in violation of) this section shall constitute a
24 record deposited in a public office for purposes of section
25 2071 of title 18, United States Code, and shall not be

1 disposed of except in accordance with the procedures
2 established under chapter 33 of title 44, United States
3 Code.

4 '(i) The functions and responsibilities of the General
5 Services Administration and of agency heads and agency
6 heads' designees under this section shall not be delegated
7 or assigned.

8 '(j) For purposes of this section--

9 '(1) the term 'Federal officer or employee'
10 includes any officer or employee of a Federal agency;

11 '(2) the term 'determination' means a written
12 document (usually a letter) that specifies the
13 operational need for listening-in or recording of
14 telephone conversations, indicates the specific system
15 and location where it is to be performed, lists the
16 number of telephones and recorders involved, establishes
17 operating times and a specific expiration date, and
18 justifies the use, and is signed by the agency head or
19 the agency head's designee;

20 '(3) the term 'agency head's designee' means only
21 the individual designated pursuant to section 3506(b) of
22 title 44, United States Code.'.